

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK, :
by LETITIA JAMES, :
Attorney General of the State of New York, :
:
Plaintiff, :
:
v. :
:
JUUL LABS INC., :
:
Defendant. :
----- X

COMPLAINT

Index No.:

Plaintiff, the People of the State of New York, by its attorney, LETITIA JAMES,
Attorney General of the State of New York, respectfully alleges, upon information and belief:

PRELIMINARY STATEMENT

1. This action seeks relief on behalf of the State of New York and its residents to address the years-long deceptive and illegal practices of JUUL LABS, INC. (“JUUL” or “Defendant”), based on its marketing and sales of its patented JUUL electronic cigarettes (“e-cigarettes”). JUUL’s aggressive advertising of its multi-flavored products has contributed to a public health crisis that has left countless New Yorkers—many of them teenagers—addicted to its products and fighting for their health.

2. Although traditional cigarette use among youth has steadily declined in recent years, youth e-cigarette use during this same period has exploded. E-cigarettes, together with other Electronic Nicotine Delivery Systems (“ENDS”), are now the **most frequently used tobacco**

products among U.S. youth.¹ JUUL represents 70% of the current market share for e-cigarettes.²

3. Between 2014 and 2017, usage among middle-school students doubled to 14.1%, while usage among high-school students doubled to 43.8%.³ Between 2017 and 2018, e-cigarette use increased 78% among high-school students and 48% among middle-school students.⁴ The 2018 National Youth Tobacco Survey indicated that there were approximately 3.62 million youth e-cigarette users.⁵

4. School districts throughout New York State—many of which are already under-resourced—are struggling to implement vaping-prevention initiatives to respond to this crisis. The New York State Department of Health, and the New York City Department of Health and Mental Hygiene, have also expended significant resources as part of a multi-faceted response to the youth-vaping epidemic in New York State.

5. Under New York State law, it is now illegal to sell nicotine products, including e-cigarettes, to consumers who are under 21 years old. Prior to November 13, 2019, New York State law prohibited selling nicotine products to consumers under 18 years old. Despite this prohibition, JUUL repeatedly targeted teenagers through its vast advertising campaigns and sold

¹ Gentzke A. S., Creamer M., Cullen K. A., et al. (2019). Vital Signs: Tobacco Product Use among Middle and High School Students – United States, 2011–2018. *Morbidity and Mortality Weekly Report*. 68(6), 157–164. <http://dx.doi.org/10.15585/mmwr.mm6806e1>; *see also* New York State Department of Health. (2017). Youth Cigarette Use at All-Time Low, ENDS Use Doubles. StatShot 10(1). Retrieved from https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume10/n1_youth_cigarette_and_ends_use.pdf.

² King BA, Gammon DG, Marynak KL, Rogers T. Electronic Cigarette Sales in the United States, 2013–2017. *JAMA*. 2018;320(13):1379–1380. doi:10.1001/jama.2018.10488.

³ New York State Department of Health. (2017). Youth Cigarette Use at All-Time Low, ENDS Use Doubles, *supra*, note 1.

⁴ Cullen K.A., Ambrose B.K., Gentzke A.S., et al. Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011–2018, *MMWR Morb Mortal Wkly Rep* 2018;67:1276–1277 (Nov. 16, 2018), *available at* <https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm>.

⁵ Walley, S. C., Wilson, K. M., Winickoff, J. P., & Groner, J. (2019). A Public Health Crisis: Electronic Cigarettes, Vape, and JUUL. *Pediatrics*, 143(6). <https://doi.org/10.1542/peds.2018-2741>.

its products in a variety of appealing flavors to underage New Yorkers through its website and in retail stores in violation of New York State law.

6. New York consumers were introduced to JUUL through targeted launch parties held in New York City and the exclusive beach community of the Hamptons, New York, in 2015. Due to JUUL's sales growth over the last four years, the company has an estimated valuation of \$38 billion, and is the dominant player in the e-cigarette industry.⁶ JUUL's products are so popular among teenagers that "JUULing"—using one of JUUL's patented e-cigarette products to consume aerosolized nicotine—has become part of the standard high school lexicon.

7. When used, an e-cigarette device heats liquid nicotine (in JUUL's case, this nicotine is contained in a "JUULpod"), to release nicotine and other chemicals in aerosol particles, which a consumer then inhales. A JUUL device consists of a mouthpiece, a disposable JUULpod, and a USB port. With the JUULpod inserted, a JUUL device measures approximately 3.5 inches in length, looks like a USB drive or "thumb drive," and fully charges via USB port in about one hour.

8. The nicotine in JUULpods is highly addictive and harmful, especially to adolescents.⁷ In 2010, the U.S. Surgeon General concluded that nicotine has the same effect on the brain as cocaine and heroin.⁸ Even infrequent use is enough to put teenagers at risk for dependence, because their developing brains are prone to nicotine addiction at much lower concentrations

⁶ Nielsen Total US xAOC/Convenience Database & Wells Fargo Securities, LLC, available at <https://1lbxcx1bcuig1rfxaq3rd6w9-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/Nielsen-Tobacco-All-Channel-Report-Period-Ending-1.27.18.pdf> [last accessed Sep. 19, 2019].

⁷ In addition to causing nicotine addiction, research is emerging on other harmful effects of e-cigarettes, including negative impacts on lung tissue, cardiovascular health and respiratory health. Additionally, e-cigarette-related deaths have been reported recently in New York State, and across the country.

⁸ Centers for Disease Control and Prevention (US), National Center for Chronic Disease Prevention and Health Promotion (US), & Office on Smoking and Health (US). (2010). How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General. Retrieved from <http://www.ncbi.nlm.nih.gov/books/NBK53017/>.

than adults.⁹ Nicotine use by young people can cause side effects ranging from lightheadedness, dizziness, headaches and sleep disruption to permanent brain maldevelopment, lowered impulse control, and various mood disorders, and can increase the likelihood they will develop an addiction to traditional cigarettes and/or other drugs.¹⁰

9. JUUL's meteoric rise to become the dominant e-cigarette brand was no accident. When JUUL launched its products in 2015, it rolled out a sleek and pervasive ad campaign that included bright and colorful images of attractive young people, accompanied by the catchy, hip phrase, "Vaporized," with corresponding social media hashtags, like #Vaporized, #JUUL, #LightsCameraVapor, and #JUULvapor.



Ads obtained from Stanford University School of Medicine Research into the Impact of Tobacco Advertising ("SRITA Database"), <http://tobacco.stanford.edu/juul>.

⁹ Siqueira, L. M., & Committee on Substance Use and Prevention. (2017). Nicotine and tobacco as substances of abuse in children and adolescents. *Pediatrics*, 139(1). <https://doi.org/10.1542/peds.2016-3436>

¹⁰ National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. (2016). *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General*. Retrieved from <http://www.ncbi.nlm.nih.gov/books/NBK538680/>.



Ads obtained pursuant to New York State Office of the Attorney General (“OAG”) investigation.



Ad obtained from SRITA Database.

10. JUUL’s advertising and social media posts misled consumers about the content of its products by failing to warn that they contain nicotine, a highly addictive chemical that is particularly dangerous for adolescents.

11. Indeed, in 2016, roughly one-third of teenagers surveyed reported that they thought JUUL and other ENDS products were totally “harmless.”¹¹ In addition to failing to include warnings about nicotine, in a meeting with high school students, a JUUL representative

¹¹ See *id.*

specifically emphasized that JUUL products were safe. By misleading consumers regarding the nature of its products, JUUL addicted a new generation of youth to nicotine, thereby securing financial gains for itself without concern for the health and safety of its consumers.

12. Not only did JUUL mislead consumers about the nicotine content and addictive nature of its products, it also misrepresented its products as a safer alternative to traditional cigarettes, when in fact, JUUL products deliver nicotine in a manner that makes them *more* addictive than traditional cigarettes. JUUL's decision in 2018 to include nicotine warnings within its advertising did little to rectify consumer confusion about its products. Indeed, these recent warnings continue to mislead consumers by representing that a JUULpod is equivalent to a pack of cigarettes when in fact, a user consumes far more nicotine per pod than per pack of cigarettes.

13. Defendant engaged in deceptive, misleading, fraudulent and illegal conduct in New York by:

- a. Marketing JUUL products in a manner that was appealing to youth;
- b. Misleading consumers about the nicotine content of JUUL products;
- c. Misrepresenting the safety and/or therapeutic value of JUUL products;
- d. Misrepresenting that JUUL products supplied nicotine in a manner that is equivalent to combustible cigarettes, when JUUL products are more likely to cause nicotine addiction quickly; and
- e. Allowing minors to purchase its products in violation of New York State law.

14. New York State has worked to stem the tide of combustible cigarettes through a host of measures that have led to dramatic decreases in tobacco consumption. Since its launch in 2015, JUUL has seized upon Big Tobacco's advertising and flavor tactics, allowing it to profit greatly at the expense of the health and safety of New York consumers, especially teenagers.

15. Plaintiff, the People of the State of New York, by Attorney General Letitia James (“OAG”), brings this action for an injunction to stop Defendant’s misleading advertising and sales practices, and equitable relief to redress Defendant’s fraudulent, deceptive and illegal conduct, including abatement and restitution. In addition, the OAG seeks the imposition of civil penalties and costs.

JURISDICTION AND PARTIES

16. The OAG brings this action pursuant to Executive Law § 63, which authorizes the Attorney General to bring an action for injunctive relief, restitution, damages, disgorgement, and costs against any person or business that has engaged in repeated or persistent fraud or illegality in the conduct of its business; and General Business Law (“GBL”) Article 22-A, which prohibits deceptive acts or practices and false advertising in the conduct of any business and authorizes the Attorney General to seek injunctive relief, restitution, penalties, and costs against any person or business that engages in deceptive acts or false advertising in the conduct of business.

17. Defendant JUUL Labs, Inc. is a foreign corporation organized under the laws of Delaware with its principal place of business in San Francisco, California.¹²

18. Since 2015, JUUL has manufactured e-cigarettes (“JUUL devices”) and JUULpods. JUUL promotes, markets, advertises, and sells its products in New York State. JUUL regularly conducts business within the State of New York and derives substantial revenue from goods sold and/or consumed in New York.

19. The Attorney General provided JUUL with the pre-litigation notice required by GBL §§ 349(c) and 350-c.

¹² PAX Labs Inc. originally owned the JUUL brand, but spun it off as a standalone corporation in 2017.

FACTUAL BACKGROUND

I. Historical Background on the Tobacco Industry.

20. For decades, the tobacco industry made billions of dollars through aggressive marketing campaigns in film, television, and print that failed to warn of cigarettes' noxious effects. This marketing campaign created the false impression that cigarettes were safe, yet left millions of Americans unwittingly addicted to nicotine, caused hundreds of thousands of deaths and illnesses due to lung cancer, lung disease and cardiovascular issues, and led to immeasurable human suffering.

21. In its relentless pursuit of profits, the tobacco industry, often referred to as "Big Tobacco," failed to relay the harmful effects of cigarettes in its messaging for decades, until the industry was subjected to increased federal regulation requiring health warnings in cigarette advertising and marketing.

22. Beginning in the 1980s, Big Tobacco developed new, fruity flavors with matching bright advertisements to attract young, impressionable consumers, who were unaware of the addictive, poisonous effects of cigarettes.

23. Since the true dangers of nicotine and smoking cigarettes came to light, Big Tobacco has faced decades of litigation over its advertising practices, including its ad campaigns targeting youth and its failure to adequately warn of the dangers associated with smoking cigarettes. Much of this litigation culminated in 1998, when 46 State Attorneys General, including the New York State Office of the Attorney General, entered into the Tobacco Master Settlement Agreement ("MSA"). The MSA prohibits the major cigarette companies from marketing and advertising their products to youth (ages 18 years old and younger), setting forth specific acts prohibited (such as use of cartoon characters and billboards near school grounds).

In 2006, the United States Department of Justice reached a separate settlement with the major cigarette companies that prohibited them from selling flavored cigarettes (excluding menthol); and required them to issue corrective statements explaining that cigarettes are not safe and were designed to create and sustain addiction.¹³

24. Following these settlements, regulators enacted additional marketing restrictions, municipalities prohibited smoking in many areas (such as restaurants), and public health advocates engaged in widespread campaigns to educate the public— youth in particular—about the dangers of smoking. As a result of all of these changes, cigarette usage among teenagers and adults has plummeted since the 1990s. In the United States, the prevalence of cigarette smoking among young people declined from 28% in 1996, to 6% in 2016,¹⁴ and among adults, from 42% in 1965 to 18% in 2012.¹⁵

II. JUUL Enters the ENDS Industry, Using Big Tobacco's Playbook.

25. Because e-cigarettes and other ENDS products are relatively new to the market, they were largely unregulated until recently. Their manufacturers are not subject to the MSA, nor are they subject to the regulatory regimes that govern the marketing and advertising of traditional cigarettes.

26. Unbridled by the MSA and pre-existing tobacco regulations, JUUL seized upon an opportunity to use Big Tobacco's strategy of marketing to youth while creating the false

¹³ Truth Initiative, "Big Tobacco Finally Forced to Tell the Truth about its Deadly Products Through Court-Ordered Advertisements," Retrieved September 20, 2019, from <https://truthinitiative.org/sites/default/files/media/files/2019/03/Big-Tobacco-Finally-Forced-to-Tell-the-Truth-About-its-Deadly-Products-Through-Court-Ordered-Advertisements.pdf>.

¹⁴ Adolescents and Tobacco: Trends [Text]. (2016, September 23). Retrieved October 9, 2019, from HHS.gov website: <https://www.hhs.gov/ash/oah/adolescent-development/substance-use/drugs/tobacco/trends/index.html>

¹⁵ National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. (2014). The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Retrieved October 9, 2019, from <http://www.ncbi.nlm.nih.gov/books/NBK179276/>.

impression that its products were harmless, thereby addicting a new generation of consumers to nicotine.

27. Just like Big Tobacco, JUUL developed bright, colorful ads and fruity, sweet-tasting flavors, such as Mango, which attracted young consumers. To make them even more attractive to young consumers, JUUL gave the flavors fun names, such as “Cool Cucumber,” “Crème Brulée,” “Fruit Medley,” and “Cool Mint.”



Ad obtained from SRITA database from 2015.

28. Similarly, JUUL depicted young people in provocative ads that appealed to adolescents.



Screenshot obtained from SRITA database.

III. JUUL's Misleading Marketing in New York State.

29. JUUL set its sights on New York consumers from the beginning, focusing its product launch on New York City and the Hamptons, a wealthy beach community on Long Island—home to celebrities, influencers, and trendsetting youth.

30. In 2015, JUUL launched its products with an expensive, multi-faceted marketing campaign. On social media platforms widely used by adolescents, such as Twitter, Instagram, and Facebook, JUUL branded itself with the catchy hashtag “#Vaporized,” to introduce the sleekness and style of its JUULpods.

31. Indeed, many of JUUL's followers were young people. One study found that approximately 45% of the individuals who were following the official @JUULvapor Twitter

account in April 2018 were between the ages of 13 and 17, while only 20% of followers were 21 or over.¹⁶



Ads obtained from SRITA database from 2015.

32. JUUL rolled out magazine advertisements and social media marketing posts with flashy images of young people looking hip, cool, and sexy while holding their JUUL devices. These ads were full of bright colors, funky patterns, and attractive, young models. JUUL's ads featured little copy, typically including only the words, "JUUL" and "Vaporized," in black or white, offset against the splashy background. These ads portray JUUL as a hip and fun brand for millennials and young people.

33. JUUL also heavily invested in its Times Square video billboards, featuring the same "Vaporized" ad campaign. The billboards, towering over midtown Manhattan, depicted attractive young people and created the false impression that JUUL's products were harmless to consumers. Like its other advertising, these billboards failed to mention that JUUL products contain nicotine or warn of their addictive nature.

¹⁶ Sidani, J. E., Colditz, J. B., Barrett, E. L., Shensa, A., Chu, K.-H., James, A. E., & Primack, B. A. (2019). I Wake Up and Hit the JUUL: Analyzing Twitter for JUUL Nicotine Effects and Dependence. *Drug and Alcohol Dependence*. <https://doi.org/10.1016/j.drugalcdep.2019.06.005>.



Ads obtained from SRITA database from 2015.

34. In the summer of 2015, JUUL held over a dozen “launch parties”—carefully crafted events designed to introduce its brand and products to consumers—across New York City and the Hamptons.

EVENTS & SAMPLING CALENDAR

	<ul style="list-style-type: none"> 4 JUUL Launch Event NYC @ Jack Studios* 5 - 6 Marquee NYC 13 - 14 Crown Victoria Brooklyn 16 Inside Hook on the Hudson @ Piers Maritime Center* 18 The Overnight Premier Party (NYC)* 18 Prop Master Party (LA) @ Eclipse Worldwide* 19 Rooftop Films with SPIN media NYC + Afterparty 27 Beer Field USA / Beer festival & Rock Concert 28 NYC Pride (@ March + Dance on the Pier) 30 Prop Master Party (NY) @ The Henley*
	<ul style="list-style-type: none"> 4 Rise Brunch with DMK @ Montauk Beach Club 10 1OAK Summer Concert Series 11 1OAK Summer Concert Series w/ D.R.A.M. 14-15 The Rest Stop with Urban Daddy (NYC)* 18 Rooftop Films w/SPIN Media 23 Up & Down Club NYC

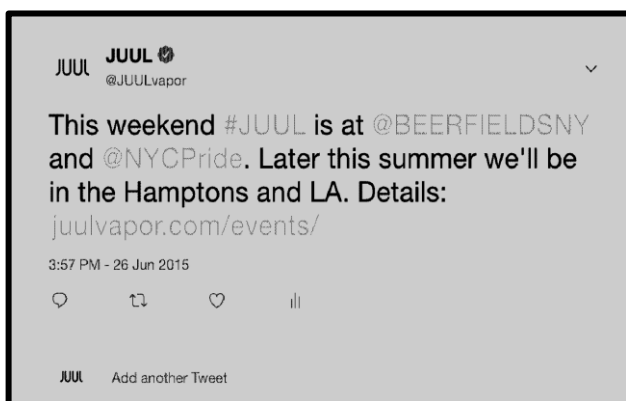
Document obtained pursuant to OAG investigation.

35. The parties were held in trendy clubs or hip outdoor venues. JUUL invited young celebrities, such as model Luka Sabbat who was 17 years old at the time, and hired young performers, such as Lauren Burge of website College Humor, to attract a young audience. JUUL

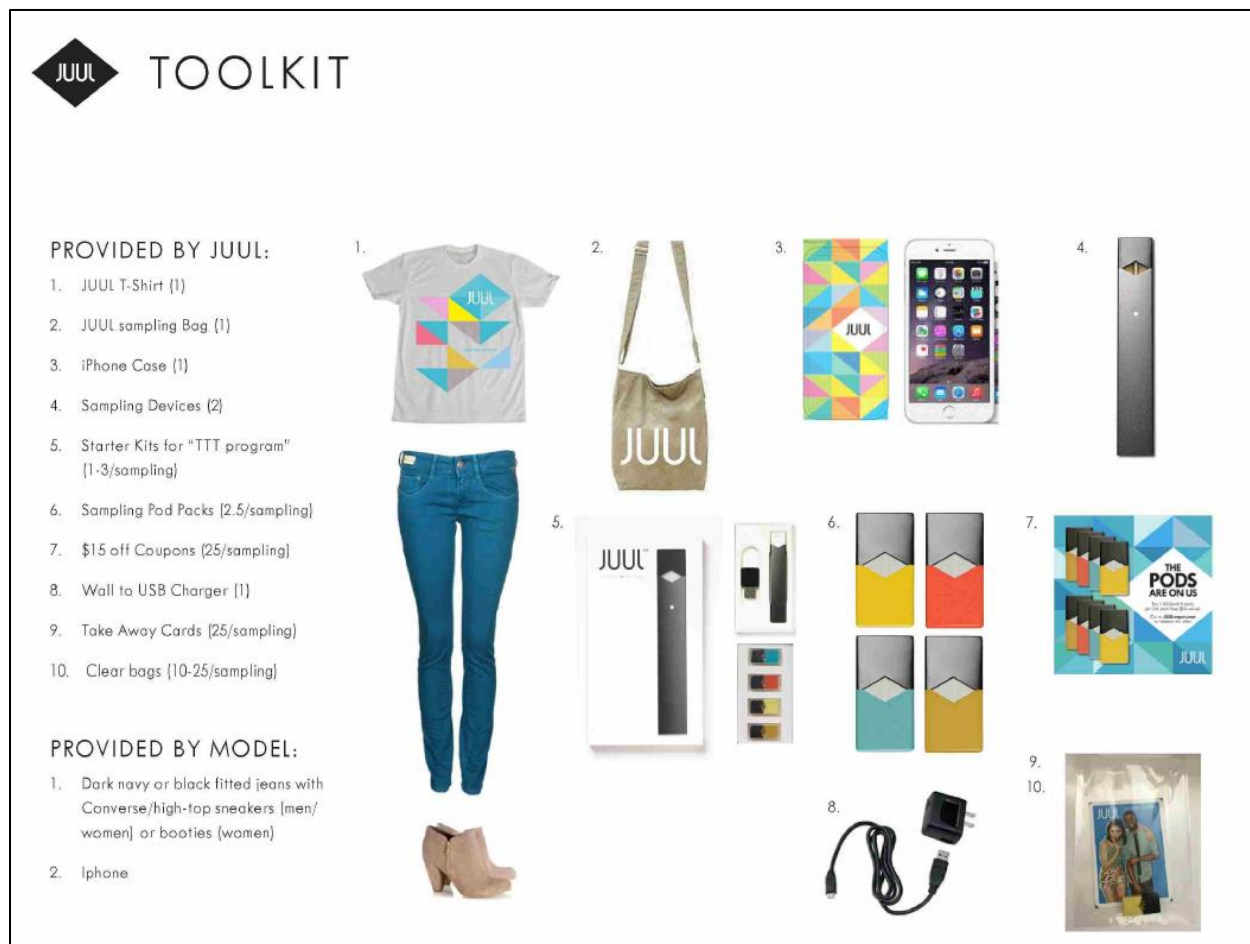
invited consumers to these events via

youthful-sounding social media postings.

Tweets obtained pursuant to OAG investigation.



36. JUUL recruited young people as “brand ambassadors,” who were tasked with handing out sample JUUL products and JUUL-branded giveaways to consumers at these launch parties. JUUL even provided its brand ambassadors with a “tool kit” that dictated their look, instructing them to wear dark skinny jeans and Converse sneakers or booties—styles known to be appealing to young people.



Document obtained pursuant to OAG investigation.

37. JUUL marketed its products to young people through its website, as well. From 2015 until approximately August 2018, JUUL’s website invited consumers to join its e-mail list to receive marketing materials, including information relating to discounts and giveaways, by

merely checking a box confirming they were over the legal age to buy JUUL's products. Until 2018, JUUL did not require any proof of age for this direct marketing.

38. Even the instructions included with JUUL's products made clear that its products were intended for young people who did not smoke cigarettes, rather than adult smokers looking for an alternative.

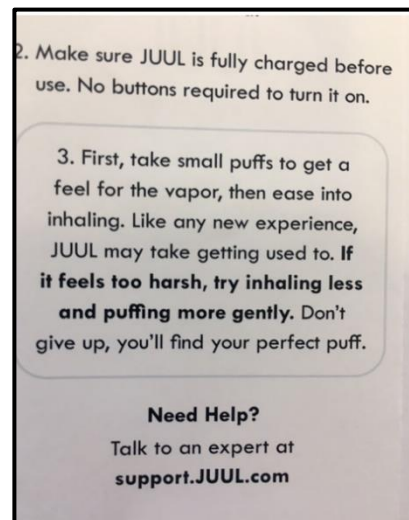


Image obtained by OAG.

IV. JUUL's Outreach and Targeting of Adolescents in New York State.

39. In addition to marketing to young New Yorkers, and in spite of New York State's ban on selling tobacco products to minors, JUUL engaged in direct outreach to high school students, including in at least one New York school.

40. Under the guise of "youth prevention," JUUL gave presentations to high schoolers in New York State and across the country, supposedly to address addiction issues; however, these presentations largely consisted of propaganda for JUUL.

41. In at least one New York City high school, a JUUL representative met with over 70 ninth-grade students and repeatedly assured them that JUUL's products were "totally safe." After the assembly, one student approached the JUUL representative and asked what to do about a friend addicted to nicotine. The representative responded that JUUL's products are a "safer alternative than smoking cigarettes and it would be better for that kid to use JUUL."

42. The JUUL representative also mentioned that the “FDA was about to come out and say that JUUL was 99% safer than cigarettes,” and that JUUL’s products were “in FDA approval” at the time the assembly took place – even though these statements were false.¹⁷

V. JUUL’s Successful Launch Led to Peer-to-Peer Sharing, Spurring an Epidemic.

43. JUUL’s widespread advertisements, presence on social media, sleek look, and outreach directly to high school students enticed underage New Yorkers to try its products and become addicted to nicotine. By 2017, JUUL began to face increasing pressure from parents, educators, elected officials, and the news media to stop advertising to underage consumers. Although JUUL responded to this pressure by releasing new advertisements that featured older models and more muted color schemes, the damage had already been done.

44. JUUL’s effective 2015 launch campaign had already hooked teenagers, who then introduced JUUL’s products to their friends and classmates, in person and through social media. Countless teenagers shared videos of “vape tricks” and pictures of themselves vaping with JUUL-related hashtags through Facebook, Instagram and Twitter. By 2017, for high school students, socialites, and celebrities, the JUUL device became the “it” product to have. As a consequence, a new generation of Americans became addicted to nicotine.

45. Not only are young people now using e-cigarettes in record numbers, but they are also smoking combustible cigarettes. In fact, a 2018 survey study revealed that 76.7% of high school and middle school students who used e-cigarettes also used another tobacco product.¹⁸

¹⁷ Economic and Consumer Policy Subcommittee Held Part I of Hearings on JUUL’s Role in Youth Nicotine Addiction Epidemic. (2019, July 24). Retrieved September 20, 2019, from House Committee on Oversight and Reform website: <https://oversight.house.gov/news/press-releases/economic-and-consumer-policy-subcommittee-held-part-i-of-hearings-on-juul-s-role>.

¹⁸ Walley, S. C., Wilson, K. M., Winickoff, J. P., & Groner, J. (2019). A Public Health Crisis: Electronic Cigarettes, Vape, and JUUL, *supra* note 5.

VI. JUUL's Misleading Statements Regarding the Safety of its Products.

46. JUUL repeatedly and persistently misled consumers by creating the impression that its products were safe or appropriate for use as a therapeutic cessation device and failing to warn consumers that its products contained the addictive chemical nicotine.

47. Nicotine is particularly dangerous for young people because their brains are still developing until about age 25. During adolescent brain development, the brain creates connections (synapses) that allow for the creation of new memories and development of new skills faster than the adult brain. This increased rate of synapse creation means that adolescents can more easily become addicted to nicotine than adults, which can prime their brains for addiction to other drugs.¹⁹

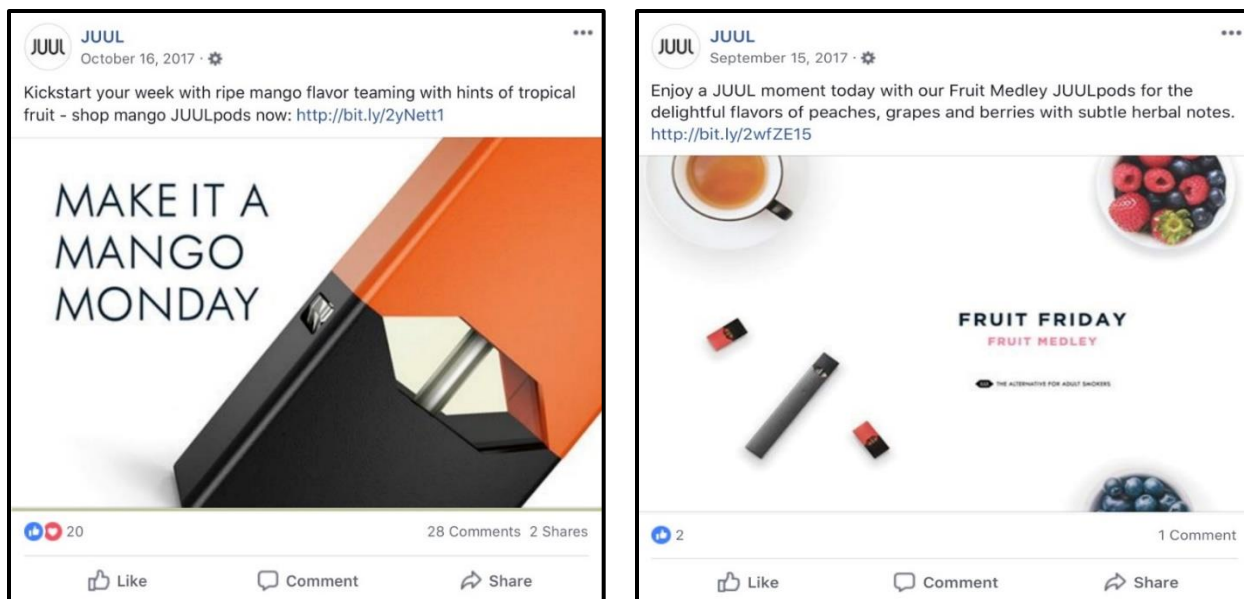
48. Despite the known dangers of nicotine addiction, until approximately 2017, JUUL misled New Yorkers by failing to mention nicotine or its harmful effects in its advertisements. None of the advertisements, billboards, or social media posts disseminated as part of JUUL's 2015 launch campaign in New York contained the word "nicotine," nor did they include any warnings of nicotine's addictive properties.²⁰ This trend continued in the many promotional e-mails that JUUL shared with consumers in 2015 and 2016. Indeed, an independent review of 171 promotional e-mails sent by JUUL from June 2015 through April 2016 contained absolutely no mention of nicotine at all.²¹

49. Similarly, JUUL's social media posts contained no mention of nicotine as late as 2017.

¹⁹ Know the Risks: E-Cigarettes and Young People | US Surgeon General Report (n.d.). Retrieved October 15, 2019, from U.S. Surgeon General's website: <https://e-cigarettes.surgeongeneral.gov>.

²⁰ See *supra*, Section III.

²¹ Jackler, R. K., Chau, C., Getachew, B. D., et al. (2019). JUUL Advertising over its First Three Years on the Market. *Stanford University School of Medicine*. Retrieved from http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.



Screenshots obtained from SRITA database.

50. JUUL took affirmative steps to distinguish its products from cigarettes and even suggest their healthfulness. By focusing on the use of the word “vapor” —which connotes cleanliness and lightness, in contrast to smoking traditional cigarettes—in its print and social media advertising, without ever specifying that the product was designed to deliver nicotine, JUUL obscured the true nature of its products.

51. JUUL ads also used the hashtag #SmokingEvolved which suggested that its products were better and safer than traditional cigarettes.



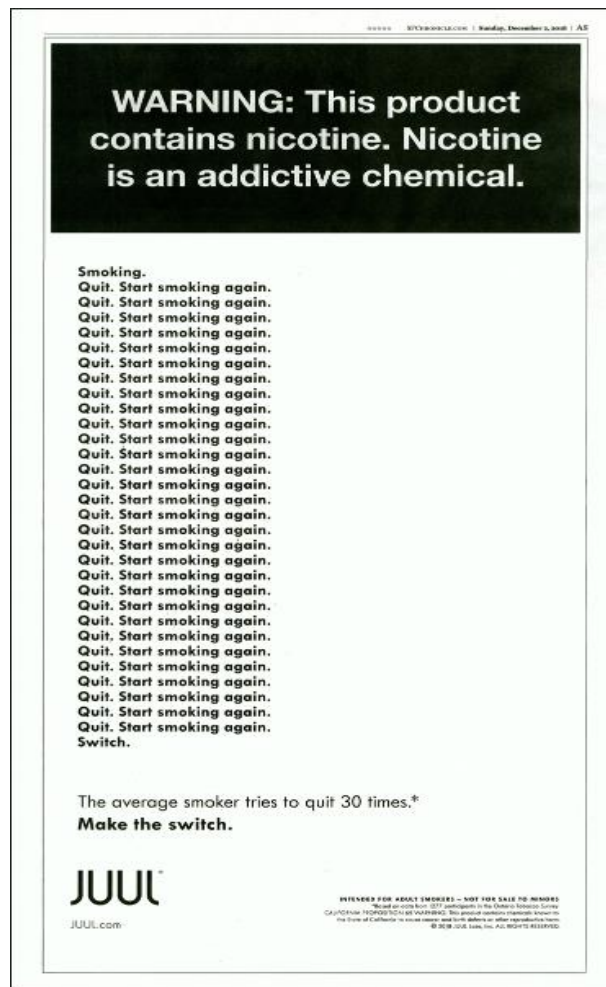
Ad obtained from SRITA database.

52. JUUL’s “Make the Switch” campaign went even further than its “Smoking Evolved” campaign by representing that its products could be used therapeutically as smoking cessation devices, when in fact, JUUL’s products have not been approved for such use by the FDA and have no demonstrated therapeutic value. After JUUL came under intense scrutiny for its youth-marketing efforts, JUUL introduced its “Make the Switch” campaign in 2018, aimed at advertising to adult smokers that its products would help them quit smoking. JUUL’s website still proclaims that its mission is to help smokers enjoy healthier lives by quitting smoking: “Improve the lives of the world’s one billion adult smokers by eliminating cigarettes.”²²

53. In fact, co-founder and Chief Product Officer, James Monsees, testified that he and Adam Bowen founded JUUL Labs Inc. to create a smoking alternative to help them and others quit smoking traditional cigarettes: “For us, giving up smoking required an alternative that did not exist at the time. We founded JUUL Labs to invent one.”²³

²² JUUL, *Our Mission*, <https://www.juul.com/mission-values> (last accessed Oct. 17, 2019).

²³ Testimony of James Monsees, Hearing Before the House Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy (July 25, 2019). Retrieved from <https://docs.house.gov/meetings/GO/GO05/20190725/109846/HHRG-116-GO05-Wstate-MonseesJ-20190725.pdf> (last accessed Oct. 28, 2019).



Ad obtained from SRITA database.

54. Similarly, JUUL's sleek USB-like design, which comes in various colors, set it apart from consumers' negative associations with cigarettes, while making it attractive to teenagers, who could easily conceal it in their hand or pocket (or in plain sight from an unknowing adult).

55. Most e-cigarettes consist of three chemicals: a humectant, nicotine, and flavors. JUULpods, like many other e-cigarette solutions, uses propylene glycol and vegetable glycerin as humectants.²⁴ One study found that these additives can form toxic aldehydes—such as

²⁴ Fadus, M. C., Smith, T. T., & Squeglia, L. M. (2019). The Rise of E-cigarettes, Pod Mod Devices, and JUUL among Youth: Factors Influencing Use, Health Implications, and Downstream Effects. *Drug and Alcohol Dependence*, 201, 85–93. <https://doi.org/10.1016/j.drugalcdep.2019.04.011>.

acetaldehyde and formaldehyde—when heated.²⁵ Additional research is emerging on the negative health consequences of inhaling the chemicals found in JUULpods and other e-cigarettes.²⁶

56. Despite these known harms, a 2016 survey found that more than half of American teenagers believed using JUUL and other ENDS products caused little harm, and one third of all teenagers believed that using JUUL and other ENDS products was completely harmless.²⁷

Similarly, **a 2018 online survey of JUUL users between the ages of 15 and 24 showed that 63% did not know that the product contained nicotine at all.**²⁸

57. Clearly, JUUL’s advertising and promotional materials succeeded in misleading young consumers to believe that its products were safe for use.

VII. JUUL’s Repeated Misrepresentations that one JUULPod is Equivalent to One Pack of Cigarettes

58. JUUL not only targeted young people through its marketing campaign and misled consumers into thinking its products were safer than cigarettes, it also misled consumers about the nicotine content in its JUULpods by misrepresenting on its website and product packaging that one JUULpod was equivalent to one pack of cigarettes.

59. In fact, in 2018, JUUL specifically instructed its employees to convey this misleading message in its marketing materials, rather than getting “too technical” and informing consumers of the true distinction between the amount of liquid nicotine in one JUULpod as compared to the amount of nicotine in a 20-pack of combustible cigarette. Even now, JUUL

²⁵ *Ibid.*; See also Dinakar, C. and G. T. O’Connor. (2016). The Health Effects of Electronic Cigarettes. *The New England Journal of Medicine*, 375(14), 1372-1381. <https://doi.org/10.1506/NEJMr1502466>.

²⁶ Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems, Board on Population Health and Public Health Practice, Health and Medicine Division, & National Academies of Sciences, Engineering, and Medicine. (2018). *Public Health Consequences of E-Cigarettes*. <https://doi.org/10.17226/24952>.

²⁷ See *supra* note 10; see also https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html

²⁸ Jackler, R. K., & Ramamurthi, D. (2019). Nicotine Arms Race: JUUL and the High-Nicotine Product Market. *Tobacco Control*. <https://doi.org/10.1136/tobaccocontrol-2018-054796>.

continues to make this claim, declaring on its product packaging that one JUULpod is equivalent to one pack of cigarettes “in both amount (20 cigarettes is equivalent to approximately 200 puffs from one JUULpod) and nicotine strength.”²⁹

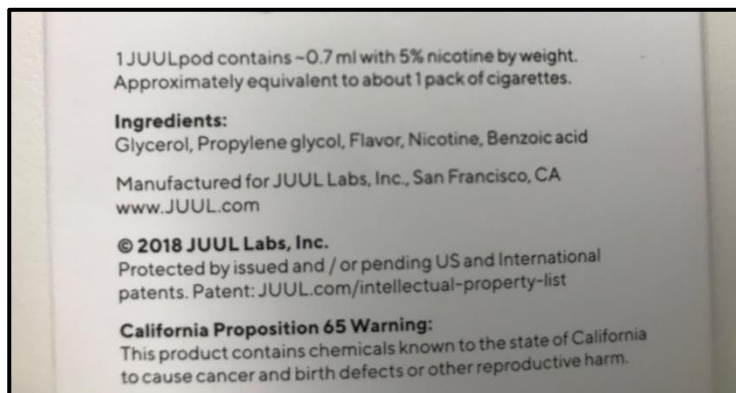


Image obtained by OAG.

60. JUUL’s statement that one JUULpod is equivalent to one pack of cigarettes is misleading. Even if one JUULpod contains an equivalent amount of nicotine as a pack of cigarettes, a consumer is likely to ingest more nicotine from the JUULpod for several reasons.³⁰

61. First, research shows that consumers can more easily inhale the vaporized nicotine in JUULpods and other ENDS products for longer periods of time as compared to the nicotine in cigarettes.³¹ Additionally, vaporized nicotine is available for absorption into the human body faster than the nicotine in traditional cigarettes.³²

62. Second, JUULpods, which contain nicotine salts, produce an easier-to-inhale aerosol that is not only more palatable than the smoke produced from a combustible cigarette,

²⁹ See, e.g., *JUUL Savings Calculator*, <http://www.juul.com/calculator> (last accessed Sep. 24, 2019).

³⁰ Multiple studies suggest that each JUULpod contains at least 41.3 mg of nicotine, as compared to the 30 to 40 mg of nicotine in combustible cigarettes. See *supra* note 26; see also Omaiye, E. E., McWhirter, K. J., Luo, W., Pankow, J. F., & Talbot, P. (2019). High-Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations. *Chemical Research in Toxicology*, 32(6), 1058–1069. <https://doi.org/10.1021/acs.chemrestox.8b00381>

³¹ See *supra* note 26.

³² JUUL 2013 Patent Filing (US-9215895-B2).

but also causes less throat irritation.³³ Thus, a consumer ingests more nicotine from a JUULpod with less discomfort than one would experience when smoking a combustible cigarette. In reference to nicotine salts, one study noted that a user's "decrease in the perceived harshness of the aerosol [vapor]" demonstrates a "greater abuse liability of the product."³⁴

63. Third, JUUL's flavored pods, especially popular among teens, can mask the bitter taste typically associated with high nicotine-containing products, which can result in a consumer inhaling more nicotine in a single sitting than one would inhale when smoking a combustible cigarette.³⁵ Indeed, an online survey of JUUL users between the ages of 15 and 24 showed that 63% of respondents did not know that the product contained nicotine, largely due to the sweet and fruity flavors of JUULpods.³⁶

64. Finally, because a cigarette continuously burns, even when it is not being puffed, the user does not inhale all of the nicotine contained in each cigarette. Relatedly, some of the nicotine in a combustible cigarette is lost in the discarded filter. In contrast, a JUULpod user can inhale all of the nicotine present in each pod.

65. In fact, research shows that the pulmonary absorption of nicotine in e-cigarette products like JUUL's may be **four times** that of a combustible cigarette.³⁷ Further, unlike cigarette smoke, where only a portion of the nicotine adheres to the lungs for absorption,

³³ See *supra* note 26.

³⁴ Duell, J., Pankow, F., Peyton, D. H. (2018) Free-Base Nicotine Determination in Electronic Cigarette Liquids by 1H NMR Spectroscopy. *Chemical Research in Toxicology*, 31(6), 431-434. <https://doi.org/10.1021/acs.chemrestox.8b00097>.

³⁵ Fadus, M. C., Smith, T. T., & Squeglia, L. M. (2019). The Rise of E-cigarettes, Pod Mod Devices, and JUUL among Youth: Factors Influencing Use, Health Implications, and Downstream Effects, *supra* note 24.

³⁶ *Ibid.*

³⁷ See *supra* note 26.

aerosolized nicotine can bind to particles that can be deposited directly into the lungs, where it can be rapidly absorbed into the pulmonary veins, and eventually into the brain.³⁸

66. JUUL's comparison of a JUULpod to a pack of cigarettes is misleading in other ways as well. In particular, a consumer's experience vaping one JUULpod is much different than smoking 20 cigarettes. When smoking 20 cigarettes, one must go outside for 20 smoke breaks, whereas JUULpods produce minimal odor and can easily be vaped indoors without detection—in a school bathroom stall, for example—making it more accessible. A smoker must also light each cigarette separately, while a JUULpod allows for a more continuous and uninterrupted flow of aerosol, thereby making it easier to lose track of how much one has vaped at any particular time.

67. In fact, JUUL's own study provided in support of its 2013 patent application concluded that nicotine salts produced increased nicotine levels in the bloodstream as compared to nicotine in combustible cigarettes.³⁹

VIII. JUUL Sold Nicotine Products to New York Consumers under the Age of 18 in violation of New York law.

68. Until recently, in New York, the sale of “tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes” was permitted to “be made only to an individual who demonstrates, through [valid identification], indicating that the individual is at least eighteen years of age.” Public Health Law (“PHL”) § 1399-cc(3).⁴⁰

³⁸ National Academies of Sciences, Engineering, and Medicine, Health and Medicine Division, Board on Population Health and Public Health Practice, & Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems. (2018). *Public Health Consequences of E-Cigarettes - Nicotine (1. Section 4)*. Retrieved from <https://www.ncbi.nlm.nih.gov/books/NBK507191/>.

³⁹ Pax Labs 2013 Patent Filing (US-9215895-B2).

⁴⁰ In July 2019, this law was amended to raise the minimum age for nicotine products from 18 to 21 years of age. The amendment took effect on November 13, 2019. Even before the passage of the amendment, several municipalities throughout the state had already raised the minimum age to purchase nicotine products to 19, 20, or 21.

69. Due to the success of JUUL's pervasive marketing campaign, described above, JUUL products are widely popular among high school and middle school students, many of whom have become addicted to them. Given JUUL's efforts to market its products to youth, it is no surprise that underage consumers attempted to purchase JUUL products through its website.

70. JUUL offered its products for sale through its website without sufficient safeguards to prevent minors from purchasing them. Although JUUL claims that its online store is restricted to "people 21+" and uses third-party age verification⁴¹ to prevent underage sales, in fact, JUUL's age verification procedures contained loopholes that allowed underage purchasers to buy through its site.

71. At least until 2018, JUUL's age verification system relied primarily on matching data that a purchaser input (name, date of birth, address, and last four digits of their social security number) with information that was available in public databases. If the data entered "matched" the publicly-available data, and that data established the person as above the legal age to buy nicotine products, JUUL did not require a consumer to upload or present identification in any manner.

72. To make matters worse, JUUL did not even require an exact data match. For instance, JUUL would accept the order if the name, date of birth, and zip code matched, even without a street address match. When a consumer failed the data-match step, the consumer was prompted to upload identification, such as a driver's license. Once a consumer passed JUUL's age verification procedures, he or she remained age verified for all future orders.

73. Despite the clear risk that youth would seek to purchase online, JUUL's age verification system did not include any method to detect minors posing as their parents, even in

⁴¹ JUUL Labs Action Plan | Company News | Youth Prevention. (November 13, 2018). Message from Kevin Burns, CEO, JUUL Labs. Retrieved from <https://newsroom.juul.com/juul-labs-action-plan/>.

the face of red flags, such as a credit card or an e-mail address containing an entirely different name, or a different first name but the same last name, from that on the order. Due to JUUL's inadequate screening procedures to prevent sales to underage consumers, JUUL sold its products to New York consumers who were under 18 years old, and in some cases, as young as 14 or 15 years old, in violation of New York's prohibition on such sales.

74. JUUL has also repeatedly sold its nicotine products to minors through retail stores in New York State. Though JUUL has touted its strict agreements with resellers and policies to prevent underage sales of its product in retail stores, these measures have been largely ineffective. For instance, even as recently as 2018, dozens of New York stores failed JUUL's secret shopper audit when their employees neglected to check identification for customers who appeared under 26 years old. Yet, despite these failures, JUUL continued to do business with many of these retailers.

75. JUUL violated PHL § 1399-cc(3) by continuing to supply its products to New York retail stores that its own audits showed were failing to check identification of underage New Yorkers seeking to purchase JUUL's products.

IX. JUUL's Repeated Misrepresentations that its Products were Modified Risk Tobacco Products Violated the Food, Drug, and Cosmetic Act.

76. The Food, Drug, and Cosmetic Act ("FD&C Act") prohibits the introduction into interstate commerce of any modified risk tobacco product without permission from the United States Food and Drug Administration ("FDA"). A "modified risk tobacco product" means any tobacco product, including an e-cigarette, that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. 21 U.S.C. § 387k(a),(b)(1).

77. This statute covers a tobacco product sold with labeling or advertising that “represents explicitly or implicitly” that the product presents a lower risk of tobacco-related disease or is less harmful than other tobacco products, or about which its manufacturer has taken any action directed to consumers that would result in consumers believing the product is safer than other tobacco products. 21 U.S.C. § 387k(b)(2). For a company to market a product as a modified risk tobacco product, it must receive authorization from the FDA. 21 U.S.C. § 387k(g).

78. JUUL marketed its products as modified risk tobacco products without express permission from the FDA, in violation of 21 U.S.C. § 387k. In 2017, a JUUL representative assured teens at a New York City high school that JUUL products were “much safer than cigarettes;”⁴² “totally safe;”⁴³ and a “safer alternative than smoking cigarettes.”⁴⁴ The representative also claimed that the “FDA was about to come out and say it [JUUL’s e-cigarette product] was 99% safer than cigarettes.”⁴⁵

79. JUUL continued to market its products as a safer alternative to cigarettes, even as recently as 2018. In a letter that JUUL published on its website in the spring of 2018, JUUL’s then-CEO Kevin Burns declared that JUUL’s “simple and convenient system incorporates temperature regulation to heat nicotine liquid and deliver smokers the satisfaction that they want without the combustion and the harm associated with it.”⁴⁶

⁴² Congressional Hearing, July 24, 2019, Testimony of Meredith Berkman, at min. 52:27-53:31. Retrieved from <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-i>

⁴³ Congressional Hearing, July 24, 2019, Testimony of Caleb Mintz, at min. 1:18:50 – 1:19:11. Retrieved from <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-i>

⁴⁴ Congressional Hearing, July 24, 2019, Testimony of Philip Fuhrman, at min. 1:20:20 – 1:21:14. Retrieved from <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-i>.

⁴⁵ *Id.* at 1:21:45 – 1:22:02. (Fuhrman)

⁴⁶ “Letter from the CEO,” from Kevin Burns, CEO, JUUL Labs, Inc., (May 8, 2018). Retrieved from <http://www.juullabs.com>.

80. In fact, on September 9, 2019, the FDA, in reference to this Congressional testimony, issued a warning letter to JUUL concluding that it had violated the FD&C Act (21 U.S.C. § 387k).⁴⁷

81. JUUL's 2018 "Make the Switch" advertising campaign, described above, also suggested to consumers that its products had a therapeutic function as smoking cessation devices, when, in fact, a single JUULpod contains at least as much nicotine as an entire pack of cigarettes and JUUL's products have not been approved for such use.

82. Through its marketing efforts, JUUL misled consumers into believing that its products were less harmful than traditional cigarettes and could even be used as a therapeutic smoking-cessation device.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION: DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF GBL § 349

83. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

84. GBL § 349 provides that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York] are ... unlawful."

85. At all relevant times, Defendant has been engaged in business, trade or commerce in New York within the meaning of GBL § 349.

86. Defendant has engaged in repeated and persistent deceptive acts and practices in the marketing of its products including but not limited to:

⁴⁷ FDA Warning Letter to JUUL Labs, Inc. (September 9, 2019). Retrieved from <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

- a. Misrepresenting, directly or by implication, the nicotine content of JUUL products;
 - b. Falsely representing, directly or by implication, that JUUL products are safer than traditional cigarettes;
 - c. Misrepresenting, directly or by implication, that one JUULpod is functionally equivalent to one pack of combustible cigarettes; and
 - d. Misrepresenting, directly or by implication, that JUUL products can be used as therapeutic cessation devices.
87. By engaging in the acts and practices described above, all of which were material, Defendant has engaged in and continues to engage in deceptive business practices in violation of GBL § 349.

**SECOND CAUSE OF ACTION:
FALSE ADVERTISING
IN VIOLATION OF GBL § 350**

88. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.
89. GBL § 350 prohibits “false advertising in the conduct of any business.”
90. At all relevant times, Defendant has been engaged in business in New York within the meaning of GBL § 350.
91. Defendant has engaged in in false advertising in violation of General Business Law § 350 by:
- a. Misrepresenting, directly or by implication, the nicotine content of JUUL products;

- b. Falsely representing, directly or by implication, that JUUL products are safer than traditional cigarettes;
 - c. Misrepresenting, directly or by implication, that one JUULpod is functionally equivalent to one pack of combustible cigarettes; and
 - d. Misrepresenting, directly or by implication, that JUUL products can be used as therapeutic cessation devices.
92. By engaging in the acts and practices described above, all of which were material, Defendant has engaged in and continues to engage in false advertising in violation of GBL § 350.

**THIRD CAUSE OF ACTION:
REPEATED AND PERSISTENT FRAUD
IN VIOLATION OF EXECUTIVE LAW § 63(12)**

93. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.
94. Executive Law § 63(12) makes “repeated fraudulent or illegal acts or...persistent fraud or illegality in the carrying on, conducting or transaction of business” actionable by the Attorney General.
95. At all relevant times, Defendant has engaged in carrying on, conducting or transaction of business in New York within the meaning of Executive Law § 63(12).
96. Defendant has engaged in repeated and persistent fraud by device, scheme or artifice to defraud and deception, misrepresentation, concealment, suppression, false pretense and/or false promise in violation of Executive Law § 63(12) by practices including but not limited to:

- a. Misrepresenting, directly or by implication, the nicotine content of JUUL products;
- b. Falsely representing, directly or by implication, that JUUL products are safer than traditional cigarettes;
- c. Misrepresenting, directly or by implication, that one JUULpod is functionally equivalent to one pack of combustible cigarettes; and
- d. Misrepresenting, directly or by implication, that JUUL products can be used as therapeutic cessation devices.

97. By engaging in the acts and practices described above, Defendant has engaged in and continues to engage in repeated fraudulent acts or persistent fraud in violation of Executive Law § 63(12).

**FOURTH CAUSE OF ACTION:
PUBLIC NUISANCE**

98. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

99. Defendant, individually and acting through its employees and agents, has engaged in conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all, in a manner such as to endanger or injure the property, health, safety or comfort of a considerable number of persons in the State of New York by the sale and marketing of JUUL products for use by residents of the State of New York, and Defendant's conduct in connection with that activity.

100. Defendant's conduct has resulted in substantial and unreasonable interference with the public health and safety, and the public's enjoyment of its right not to be defrauded or injured by wrongful conduct.

101. Defendant's conduct is continuing in nature and has produced permanent and long-lasting effects. Defendant's unlawful conduct has so impacted e-cigarette addiction and consumption rates—particularly among young people—and public health that the public nuisance caused in substantial part by Defendant's conduct is commonly referred to as a “public health crisis,” the “JUUL epidemic,” or a “teen vaping epidemic.”⁴⁸

102. By engaging in the acts described above, Defendant's conduct constitutes a public nuisance.

**FIFTH CAUSE OF ACTION:
PURSUANT TO EXECUTIVE LAW § 63(12)
ILLEGAL CONDUCT – VIOLATIONS OF GBL §§ 349 & 350**

103. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

104. Executive Law § 63(12) makes “repeated fraudulent or illegal acts or...persistent fraud or illegality in the carrying on, conducting or transaction of business” actionable by the Attorney General.

105. At all relevant times, Defendant has engaged in carrying on, conducting or transaction of business in New York within the meaning of Executive Law § 63(12).

106. Defendant has engaged in repeated and persistent illegality in the marketing of JUUL products including but not limited to:

- a. Misrepresenting, directly or by implication, the nicotine content of JUUL products;
- b. Falsely representing, directly or by implication, that JUUL products are safer than traditional cigarettes;

⁴⁸ See *supra* notes 5 and 16.

- c. Misrepresenting, directly or by implication, that one JUULpod is functionally equivalent to one pack of combustible cigarettes; and
- d. Misrepresenting, directly or by implication, that JUUL products can be used as therapeutic cessation devices.

107. By engaging in the acts and practices described above, which include violations of GBL §§ 349 and 350, Defendant has engaged in and continues to engage in repeated illegal acts or persistent illegality in violation of Executive Law § 63(12).

**SIXTH CAUSE OF ACTION:
PURSUANT TO EXECUTIVE LAW § 63(12)
ILLEGAL CONDUCT — VIOLATION OF PUBLIC HEALTH LAW § 1399-cc(3)**

108. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

109. Executive Law § 63(12) makes “repeated fraudulent or illegal acts or...persistent fraud or illegality in the carrying on, conducting or transaction of business” actionable by the Attorney General.

110. PHL§ 1399-cc(3) provides, in pertinent part, “Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes in such places . . . shall be made only to an individual who demonstrates, through [valid identification] indicating that the individual is at least eighteen years of age.”

111. At all relevant times, Defendant has engaged in carrying on, conducting or transaction of business in New York within the meaning of Executive Law § 63(12).

112. Defendant has engaged in repeated illegality by violating PHL § 1399-cc(3) by selling JUUL products to consumers in New York State who are under the age of 18.

113. By engaging in the acts and practices described above, which include violations of PHL § 1399-cc(3), Defendant has engaged in and continues to engage in repeated illegal acts or persistent illegality in violation of Executive Law § 63(12).

**SEVENTH CAUSE OF ACTION:
PURSUANT TO EXECUTIVE LAW § 63(12)
ILLEGAL CONDUCT — VIOLATION OF FTC ACT §5**

114. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

115. Executive Law § 63(12) makes “repeated fraudulent or illegal acts or...persistent fraud or illegality in the carrying on, conducting or transaction of business” actionable by the Attorney General.

116. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)) prohibits “unfair or deceptive acts or practices in or affecting commerce.”

117. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers, and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

118. At all relevant times, Defendant has engaged in carrying on, conducting or transaction of business in New York within the meaning of Executive Law § 63(12).

119. Defendant has engaged in repeated illegality by committing unfair acts and practices in the marketing, promotion and sales of JUUL products including but not limited to:

- a. Marketing JUUL products in a manner that was appealing to youth;
- b. Selling JUUL products, and allowing JUUL products to be sold, to youth;
- c. Failing to disclose that JUUL products contained nicotine and that nicotine is an addictive chemical; and

- d. Failing to disclose the adverse health consequences of JUUL products, including creating the false impression that JUUL products were safer than traditional cigarettes, and/or could be used as therapeutic cessation devices.

120. Defendant's conduct has caused and is likely to cause substantial injury to consumers in New York and throughout the United States that cannot be reasonably avoidable and is not outweighed by countervailing benefits.

121. By engaging in the acts and practices described above, which include violations of Section 5(a) of the FTC Act, Defendant has engaged in and continue to engage in repeated illegal acts or persistent illegality in violation of Executive Law § 63(12).

**EIGHTH CAUSE OF ACTION:
PURSUANT TO EXECUTIVE LAW § 63(12)
ILLEGAL CONDUCT — VIOLATION OF FD&C ACT**

122. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

123. Executive Law § 63(12) makes “repeated fraudulent or illegal acts or...persistent fraud or illegality in the carrying on, conducting or transaction of business” actionable by the Attorney General.

124. Section 911 of The Federal Food, Drug, & Cosmetic Act (“FD&C Act”) (21 U.S.C. § 387k) prohibits the introduction into interstate commerce of any modified risk tobacco product without an order from the Secretary of Health & Human Services.

125. At all relevant times, Defendant has engaged in carrying on, conducting or transaction of business in New York within the meaning of Executive Law § 63(12).

126. Defendant has engaged in repeated illegality by repeatedly violating FD&C Act, 21 U.S.C. § 387k, by marketing its products as modified risk tobacco products without express permission from the FDA.

127. By engaging in the acts and practices described above, which include violations of 21 U.S.C. § 387k, Defendant has engaged in and continues to engage in repeated illegal acts or persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the People of the State of New York, respectfully requests that a judgment and order be entered that:

- A. Permanently enjoins Defendant and any other entity through which it may act from engaging in the deceptive, fraudulent and illegal practices alleged herein;
- B. Directs Defendant to endow an abatement fund with sufficient capital to eliminate the public nuisance it is responsible for creating, exacerbating, and/or perpetuating;
- C. Directs Defendant to pay a civil penalty of \$5,000 to the State of New York pursuant to GBL § 350-d for each instance of a deceptive or unlawful act or practice that violates GBL Article 22-A;
- D. Directs Defendant to pay a civil penalty of \$1,000 to the State of New York pursuant to PHL § 1399-cc(5) for each instance of a sale that violates PHL § 1399-cc;
- E. Directs Defendant to produce an accounting of profits and to disgorge all profits resulting from the fraudulent and illegal practices alleged herein;
- F. Directs Defendant to pay restitution and damages to the State of New York based on Defendant's fraudulent, deceptive, and illegal practices;
- G. Awards the State of New York's costs; and

H. Grants all other relief that is just and proper.

New York County, New York
November 19, 2019

Respectfully submitted,

LETITIA JAMES
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